

REMARKS

In view of the foregoing amendments and the following representations, reconsideration of the above-identified application is respectfully requested.

Claims 1 and 13 are pending. Claims 3-12 are withdrawn.

Applicant submits this response to the Final Office Action dated September 22, 2009 by filing a Request For Continued Examination (RCE) and the present Preliminary Amendment thereto.

Claims 1 and 2 are rejected under 35 USC 101 for “same invention” type double patenting over claims 1 and 2 of prior USP 7,395,944 and over claims 1 – 3 prior USP 7,228,988.

In the present Preliminary Amendment, claim 1 has been amended to delete reference to the fact that the claim element rail “is inclined.” It is clear that the present invention describes a rail on the inclined attaching plate. Claim 1 has also been amended to make it clear that the wrapping paper is being continuously pulled out from the roll to the wrapping machine. The amendments to claim 1 do not constitute, nor contain new matter.

Historical Summary of Prosecution

Applicant’s attorney Gordon Coplein, Registration 19,165, refers to a telephone conversation with the Examiner on November 18, 2009 during which said attorney attempted to schedule an interview to discuss the outstanding rejection as set forth in the Final Office Action. The Examiner said that an interview was not proper at this time and stated that a formal response should be made which would be promptly considered. An Amendment after Final Rejection was timely filed on December 9, 2009. An Advisory Action was issued on December 30, 2009 which continued the rejection of the Final Office Action.

In the Advisory Action the Examiner takes the position that in the issued patent ’944,

claim 1 refers to “movable tension in applying means” and in the issued patent’988 claim 1 refers to “tension in applying means”. It is the Examiner’s position that the quoted phrases make both issued patents subject to 35 U.S.C. § 112, sixth paragraph. The Examiner also contends that the “tension in applying means” as claimed in both issued patents is shown in FIG. 7 of each patent. The Examiner further contends that the cited prior art references are “exactly similar” to the claimed “tension application mechanism” of the claims of the present application. Applicant respectfully disagrees with these positions and traverses the rejection.

The claims at issue of the two patents are reproduced below. The application claims, referring specifically to amended claim 1, are presented above.

Claims of patent 7,395,944 ('944)

1. A medicine supply apparatus comprising:

a tablet case containing medicines;

a roll of packing paper in the state where said packing paper is open at its upper end and folded at its lower end;

a mechanism for continuously drawing out said packing paper from said roll;

a nozzle having a discharge end that is inserted into said upper open end of said packing paper for projecting the medicines discharged from said tablet case into said packing paper upper open end; heat seal means for sealing by heat welding the part of an upper open end of said packing paper after having received the medicines from said nozzle, and partitioning said packing paper per pack; and

movable tension applying means urged toward said packing paper by an elastic member for applying tension to said packing paper at a location past the point where said nozzle discharge end is inserted into said packing paper upper open end and before the point where said heat seal

means is located in a direction to close the upper end opening of said packing paper to be sealed by said heat seal means.

2. A medicine supply apparatus according to claim 1, wherein said tension applying means is fitted with the heat seal means.

Claims of Patent 7,228,988 ('988)

1. A medicine supply apparatus for supplying a medicine comprising:

a tablet case containing the medicine;

a nozzle for discharging the medicine from said tablet case; and a shutter rotatably provided in said nozzle for opening/closing a medicine drop path in said nozzle; wherein said shutter comprises

a first shutter plate of a size capable of closing the inside of said nozzle and that is rotated, a second shutter plate swingably connected to the tip of said first shutter plate, and a guide for swinging said second shutter plate in a direction opposite to a direction of rotation of said first shutter plate in a final stage where said first shutter plate is opened, and wherein the tip of said second shutter plate is located in a position to narrow an outlet of said medicine drop path when said first shutter plate is opened.

2. A medicine supply apparatus as claimed in claim 1 further comprising:

a roll of packing paper in the state where said packing paper is open at its upper end and folded at its lower end; wherein said nozzle projects the medicine discharged from said tablet case into said packing paper upper open end that is being continuously drawn out;

heat seal means for sealing by heat welding an upper end opening of said packing paper having received the medicines from said nozzle, and partitioning said packing paper per pack; and

tension applying means for applying tension to said packing paper in a direction to close the upper end opening of said packing paper to be sealed by said heat seal means.

3. A medicine supply apparatus according to claim 2, wherein said tension applying means is movably provided and urged toward said packing paper by an elastic member.

It is clear that the tension applying mechanism of the '988 patent are directed to the movable member 143 and plate spring 144. [See FIGS. 14 – 19, and Column 12 line33 – Column 13 line 41 '988 reference.] The tension applying mechanism works to close the opening of the wrapping paper, whose lower end is folded into a "V" shape so as be more easily sealed.

Additionally, it is clear that the tension applying mechanism covered by the claims of the 994 patent are also directed to a movable member 143 and a played spring 144. The tension applying position of the described device is clearly set forth as being located after the nozzle and before the sealing mechanism.

Applicant further points out that the tension and applying mechanism of the '994 and '988 patents are directed to figures 14 – 19 of the patents and not to figure 7 as the Examiner contends.

3. Comparison of the claims of the issued patents and amended claim 1 of the application.

In the subject application, the structure (operation section, rod, roller and rail) of the tension applying mechanism of claim 1 is different from that of the two patents. The claims of neither of the patents recite the rod, roller and rail structure of claim 1 of the subject application.

Also, the position of the tension applying mechanism is different. That is, the position is just after the paper is pulled out from the roll. This is done to prevent wrinkles in the wrapping paper.

Applicant has demonstrated that the tension in applying means of the claims of the subject application and that that is claimed in both issued patents is NOT “exactly similar” to the claimed “tension application mechanism” of the claims of the subject application. Accordingly, the “same invention” double patenting rejection is improperly being applied and should be withdrawn.

Attention is directed to the legal argument presented in the Amendment After Final rejection. This argument is repeated and incorporated herein by reference.

CONCLUSION


In view of the above discussion, applicant believes the pending application is in condition for allowance. It is believed that all of the stated grounds of rejections have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections.

If there are any other issues remaining which the Examiner believes could be resolved through a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

In the event that an extension of time is required, or may be required in addition to that requested in a petition of extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely. The Commissioner is hereby authorized to charge any unpaid fees deemed required in connection with this submission or to credit

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Respectfully submitted,

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